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OCT 18 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

MELODIE A. VIRTUE
ADMITTED IN VA AND D.C.

October 18, 1996

OUR FILE NO.
1410-101-63

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL


RE: MM Docket No. 96-95
RM-8787, 8838

Dear Mr. Caton:

Transmitted herewith, on behalf of LifeStyle Communications Corp. are an original and four copies of its **MOTION FOR LEAVE TO FILE REPLY TO SUPPLEMENTAL COMMENTS** and **REPLY TO SUPPLEMENTAL COMMENTS** in the above-referenced rulemaking proceeding. The original signature declaration will be filed upon receipt.

Should further information be necessary, kindly communicate directly with this office.

Very truly yours,


Melodie A. Virtue

Enclosures (5)
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Washington, D.C. 20554

To: Chief, Allocations Branch

MM Docket No. 96-95
RM-8787, 8838

LifeStyle Communications Corp. ("LifeStyle"), licensee of KJJC(FM),
Osceola, Iowa, by counsel, hereby respectfully moves for leave to file the
accompanying Reply to Supplemental Comments in response to
Supplemental Comments of Platte Broadcasting, Inc., dated September
3, 1996, in the above-captioned rule making proceeding.

In its Supplemental Comments, Petitioner asserts additional arguments in response to LifeStyle's previously-filed Supplemental Comments, which had been submitted in opposition to a new allotment scheme set forth in Petitioner's Reply Comments. If the Commission should accept Petitioner's Supplemental Comments, LifeStyle respectfully requests consideration of the accompanying Reply to Supplemental Comments in order to address Petitioner's new arguments. To do so will assist the Commission with resolution of the issues raised in this

proceeding and provide the Commission with a better record from which to base its decision.

WHEREFORE, the premises considered, LifeStyle Communications Corp. respectfully requests that the Commission grant it leave to file the concurrently-tendered Reply to Supplemental Comments and that it accept the Reply to Supplemental Comments.

Respectfully submitted,

LIFESTYLE COMMUNICATIONS CORP.

HALEY BADER & POTTS P.L.C.
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606

October 18, 1996

By

A handwritten signature in dark ink, appearing to read "John M. Pelkey", is written over a horizontal line.

John M. Pelkey
Melodie A. Virtue
Its Attorneys

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OCT 18 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before The
Federal Communications Commission

Washington, D.C. 20554

In The Matter Of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Papillion and Plattsmouth, Nebraska, and
Osceola, Iowa)

To: Chief, Allocations Branch

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)
) MM Docket No. 96-95
) RM-8787, 8838
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Reply to Supplemental Comments

LifeStyle Communications Corp. ("LifeStyle"), licensee of KJJC(FM),
Osceola, Iowa, by counsel, hereby respectfully submits its reply to the
Supplemental Comments of Platte Broadcasting, Inc. (hereinafter
"Petitioner"), dated September 3, 1996, in the above-captioned rule
making proceeding.

Background

The proposals of the parties at various stages of this rulemaking
proceeding are summarized in the following chart:

<u>Communities</u>	<u>Existing Channel</u>	<u>NPRM Proposal</u>	<u>LifeStyle's Counter- proposal</u>	<u>Petitioner's Reply Proposal</u>
Plattsmouth, NE	295A	295C3	299A	299A
Papillion, NE	--	--	295A	295C3
Osceola, IA	295C2	296C2	295C2	296C2

On August 6, 1996, LifeStyle submitted Supplemental Comments
in opposition to the allocation plan Petitioner proposed in Reply

Comments, dated June 29, 1996, and supplemented July 1, 1996 (hereinafter collectively referred to as Petitioner's "Reply"). LifeStyle argued that (1) Petitioner's Reply set forth a counter-counterproposal too late to be considered in the context of this rulemaking proceeding; and (2) the Urbanized Area policy applied to Petitioner's newly proposed migration from Plattsmouth to Papillion.

In its latest Supplemental Comments filed September 3, 1996, Petitioner misconstrues the Commission's procedural rules that cut off its late proposal, assumes it has a right to an upgrade, and contends that Plattsmouth would not lose service by Petitioner's abandonment and move to Papillion since it volunteers to use the same transmitter site. LifeStyle offers this response lest there be any misunderstanding about how the Commission's rules and precedent operate in a channel allocation rulemaking proceeding.

Petitioner's Counter-Counterproposal Came Too Late.

The first twelve pages of Petitioner's Supplemental Comments¹ generally complain against LifeStyle's position that the Reply, which put forth a counter-counterproposal, could not be accepted at the reply comment stage. The Appendix to the *Notice of Proposed Rule Making*, DA

¹ Petitioner's Supplemental Comments were 17 pages in length. Petitioner failed to supply a summary and table of contents as required by Rule 1.49(b) & (c) for pleadings longer than 10 pages. Rule 1.48 requires that "if the length of the pleading . . . is greater than permitted by the provisions of this chapter, the pleading will be returned without consideration."

96-554, released April 25, 1996, was clear -- counterproposals must be received by the deadline for filing initial comments. Appendix to *Notice*, paragraph 3(a); 47 C.F.R. § 1.420(d).

Petitioner's contention that it is offering a resolution which is appropriate for reply comments is plainly wrong. Pet.'s SC p. 7. Petitioner does not propose a solution to the rulemaking that would reconcile conflicting positions: Petitioner's resolution is that LifeStyle neither gets the ability to file for Papillion nor the ability to stay on its current frequency.

An incessant refrain is Petitioner's claim that its Reply raised no new issues, channels or communities and, therefore, its late proposal is not really a counterproposal. Pet.'s SC pp. 6, 8, 10, 12. To the contrary, Petitioner's Reply did all three: (1) it proposes a change in the community of license whereby Plattsmouth would lose its existing FM service; (2) a new issue arises regarding the application of the Urbanized Area Policy to Petitioner's migration from a rural community to an urban community; and (3) it recommends a different class of channel -- 295C3, as opposed to Channel 295A -- for Papillion, which entails different technical ramifications if the reference point for Papillion were placed in the FM database instead of Petitioner's existing site. Thus, it is not true that no new issues, communities or channels are implicated.

Petitioner also attempts to bootstrap its late proposal as "comments" requested by the *Public Notice*, Report No. 2142, issued July 11, 1996, announcing LifeStyle's timely-filed counterproposal. Pet.'s SC p. 7. Petitioner's concept of the function of that *Public Notice* -- to allow a third-party to advise the Commission of yet another mutually exclusive allotment scheme -- is wholly inconsistent with the rule cutting off counterproposals after the initial comment deadline. Reply comments and comments in response to the *Public Notice* serve the purpose of identifying technical feasibility problems or suggesting solutions to resolve all conflicts. Petitioner's Reply did neither. Instead, Petitioner wants the Commission to give it the new allotment for Papillion rather than opening it up for applications by others.

**Petitioner Can Abandon Plattsmouth
After the Rulemaking by Moving its Transmitter Site.**

It is disingenuous for Petitioner to claim that its Reply proposal is "minor" because it would "utilize the exact same co-ordinates" and the "change in community of license could not be viewed as a 'migration' of a small town station to a 'big city' because the tower and transmitter would stay in the same location." Pet.'s SC pp. 3-4. If the Commission granted Petitioner's Reply proposal, Petitioner could move its transmitter site to any location closer to Omaha so long as Papillion received city grade coverage. It would have no further obligation to provide city grade coverage to Plattsmouth.

Petitioner Has No Right to an Upgrade.

Petitioner laments the inapplicability of Rule 1.420(g)(3) to its initial request for a co-channel upgrade (Pet.'s SC pp. 14-16), which governs the process by which the Commission may modify a license to a mutually exclusive higher class adjacent or co-channel. 47 C.F.R. § 1.420(g)(3).² Nonetheless, Petitioner holds no exclusive right to an upgrade where other changes to the Table of Allotments are required. See 47 C.F.R. § 73.203(b) Note. Moreover, its proposal to upgrade, even on a co-channel, is subject to timely-filed counterproposals. In the proceeding that adopted Rule 1.420(g)(3), which Petitioner contends should apply to it in spirit, the Commission explicitly stated:

Pursuant to existing procedures, the Commission will consider any technically feasible counterproposal filed in response to a proposed allotment. Counterproposals are an inherent part of the rule making process, and the Commission considers the comparative needs of the communities pursuant to Section 307(b) determinations regarding the best uses of spectrum. Thus, it will continue to compare the service needs of the communities involved, even where counterproposals involve no higher class channels.

Amendment of the Commission's Rules Regarding Modification of FM

Broadcast Licenses to Higher Class Co-channel or Adjacent Channels. 60

RR2d 114, 119 (1986)(hereinafter "*Modification to Higher Class Co-*

² Rule 1.420(g)(3) provides that "the Commission may modify the license .. of an FM station to another class of channel . . . if any of the following conditions are met: . . . (3) With respect to FM, the modification of license or permit would occur on a mutually exclusive higher class adjacent or co-channel."

Channel'). LifeStyle's counterproposal is technically feasible and must be compared with the proposal set forth in the *NPRM*.

In contrast to the problem addressed in *Modification of Higher Class Co-Channel*, Petitioner is not placing its license "in play" whereby it has the choice of withdrawing the request to upgrade the channel or face a comparative hearing after which it could lose its license. Going forward does not mean that Petitioner risks losing its station. Instead, the only downside is that it will have to change channels to Channel 299A, the very same fate it would impose on LifeStyle.³

Conclusion

Essentially, Petitioner failed to do what every petitioner in a rulemaking proceeding should do when it initiates a rulemaking proceeding to change the table of allotments. It was shortsighted. It failed to think the situation through to anticipate the changes its original proposal might trigger. The rules and case precedent are unambiguous that counterproposals will not be entertained after the initial comment date. Otherwise, these rulemaking proceedings would continue ad nauseam.

³ Although Petitioner criticizes LifeStyle's motives in this proceeding, the FCC has held that motive in a rulemaking is irrelevant. *FM Channel Assignments (Eatonton and Sandy Springs, GA, and Anniston and Lineville, AL)*, 6 FCC Rcd. 6580, 6581 (MMB 1991). Moreover, it should be noted that LifeStyle's controlling principal, James McBride, lived less than 10 miles from Papillion from 1984 to 1989, and relishes the prospect of moving back to the area to run a station in Papillion. See attached Declaration. Consequently, LifeStyle is very much interested in applying for a new allotment at Papillion.

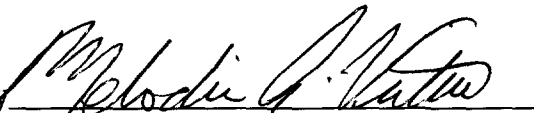
WHEREFORE, the premises considered, LifeStyle Communications Corp. respectfully requests that the Commission reject the proposal set forth in the NPRM and the counter-counterproposal in Petitioner's Reply Comments, and that it accept LifeStyle's Counterproposal to substitute Channel 299A for Channel 295A at Plattsmouth, Nebraska, and to allot Channel 295A at Papillion, Nebraska.

Respectfully submitted,

LIFESTYLE COMMUNICATIONS CORP.

HALEY BADER & POTTS P.L.C.
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606

October 18, 1996

By 
John M. Pelkey
Melodie A. Virtue
Its Attorneys

DECLARATION

I, James S. McBride, hereby declare under penalty of perjury as follows:

I am the President and majority stockholder of LifeStyle
Communications Corporation.

I resided within ten miles of Papillion, Nebraska, from 1984 to 1989, in
Western Omaha, at West 163rd Street. I would be eager to move back to the
area to run a new FM station at Papillion.

Respectfully submitted,

By


James S. McBride

Dated: October 18, 1996

CERTIFICATE OF SERVICE

I, Barbara L. Rascon, a secretary in the law offices of Haley Bader & Potts P.L.C., hereby certify that I have on this 18th day of October 1996, sent copies of the foregoing "**MOTION FOR LEAVE TO FILE REPLY TO SUPPLEMENTAL COMMENTS**" and "**REPLY TO SUPPLEMENTAL COMMENTS**" by first-class, United States mail, postage prepaid, to the following:

Richard J. Hayes, Jr., Esq.
13809 Black Meadow Road
Greenwood Plantation
Spotsylvania, VA 22553
(Counsel to Petitioner)


Barbara L. Rascon